KHOO CHENG & ORS

v.

GAN HONG YOCK & ORS & ANOTHER APPEALS

COURT OF APPEAL, PUTRAJAYA
ABDUL KADIR SULAIMAN JCA
ARIFIN JAKA JCA
NIK HASHIM JCA
[CIVIL APPEAL NOS: J-02-485-1998 & J-02-627-1998]
13 DECEMBER 2004

CIVIL PROCEDURE: *Judgments and orders - Setting aside - Succession - Estate property - Order for sale of land - Order for sale granted despite non-service of notice and application on beneficiaries - Whether against natural justice - Whether to be set aside ex debito justitiae - Probate and Administration Act 1959, s. 60(4)*

SUCCESSION: *Administration - Sale of land - Order for sale - Duty of court - Whether to adopt best price rule - Whether to protect the interests of the estate as a whole - Sale of land to some beneficiaries at prices much lower than market value of land - Whether inappropriate - Whether order for sale to be set aside - Distribution Act 1958 s. 6(1) - Probate and Administration Act 1959, s. 60(4)*

The appellants and the respondents in these appeals ('Appeals '485' and '627') were beneficiaries to the estate of Gan Cheng Leong ('the deceased') who died intestate and left behind properties in the form of 40 lots of land in Muar, Johore. The appeals arose out of the order for sale made by the learned judge below ('Order of 16 June 1998'), selling 13 of the lots of land to the respondents at prices purportedly below the prevailing market value of the land. The 1st to 3rd appellants in Appeal 485 were the administrators of the estate and also the appellants in Appeal 627, whilst the 4th to 6th appellants in Appeal 485 were the interveners in that appeal.

It was not in dispute that: (i) the Order of 16 June 1998 was made pursuant to a summons-in-chambers application by the administrators for an order for sale of the 40 lots of land at certain reserved prices ('the 1995 Application'); (ii) prior to the 1995 Application, the respondents had filed an originating summons application in 1992 ('OS 852') for an order of distribution of the 40 lots of land, but that no decision was made thereon by the court; (iii) in making the Order of 16 June 1998, the learned judge had allowed the respondents to withdraw their valuation reports on the land and at the same

time refused to adopt the administrators' valuation reports thereof (both of which quoted much higher prices for the lots); and (iv) in making the Order of 16 June 1998, the learned judge was seemingly unaware that in both OS 852 and the 1995 Application, no notice of the applications had been served on the 4th to 6th appellants. The obtaining facts apart, following the Order of 16 June 1998, the administrators had stumbled upon some typing errors in the prices quoted in their valuation reports, and so applied orally to the learned judge to amend the same. The application was refused and the administrators appealed *vide* Appeal 627 herein. The primary issues that arose were: (i) whether the Order of 16 June 1998 was unsustainable in law and ought to be set aside; and (ii) whether it was wrong of the learned judge to have refused the application to amend.

Held (allowing the appeals)
Per Arifin Jaka JCA delivering the judgment of the court:

[1] The respondents' failure to serve OS 852 for an order of distribution and the administrators' failure to serve the 1995 Application for an order for sale and the notice thereof on the 4th - 6th appellants constituted a clear violation of the rules of natural justice. On this ground alone, the 4th - 6th appellants were entitled to have the impugned Order of 16 June 1998 set aside *ex-debito justitiae.* (p 92 f-g)

[2] The complaint of the 4th - 6th appellants was that the learned judge did not observe the best price available and that he had favoured the five respondents and sold the 13 selected lots of land to them at prices incredibly lower than their own valuations or those of the administrators. With respect this complaint is well founded and supported by a long line of authorities. (p 94 b-c)

[2a] The learned judge, assuming that he had a proper application for sale before him, should have applied the best price rule and sold the 13 lots of land at the best prices available. The ultimate object of the best price rule is the protection of the interest of all the beneficiaries of the estate as a whole, not merely the interests of some of the beneficiaries. (p 93 g)

[2b] The learned judge had allowed the respondents to withdraw their valuation reports and expunged them from the record without giving any valid reason thereto. The respondents, upon withdrawing their valuation reports, had however accepted the valuation reports of the administrators. In the circumstances, the learned judge should have acted on the valuation reports of the administrators, and so, should have sold Lot

2983 at the minimum price of RM400,000, and not at RM52,560. The learned judge had erred in law in selling that lot at a wholly unjustifiable price many times lower than the minimum price. (p 93 h)

[3] In the 1995 Application, the administrators had applied for an order for sale of the 40 lots of land at the stated reserved prices, but not for any lot to be sold to the five respondents or anyone. The learned judge was not at liberty to go beyond the scope of the administrators' application and had erred in law in making the Order of 16 June 1998. (p 94 g-h)

[4] As for Appeal 627, the objection of the respondents is clearly without any merit. The learned judge should have allowed the amendment to reflect the proper reserved prices based on the evidence of the administrators' valuation reports which were before him. (p 95 g)

[Order of 16 June 1998 set aside; costs of appellants to be paid by estate, whilst respondents to bear own costs; 1995 Application re-instated.]

*[**Bahasa Malaysia** Translation of Headnotes*

Perayu dan responden dalam rayuan-rayuan di sini ('Rayuan '485' dan '627') adalah waris kepada pusaka Gan Cheng Leong ('simati') yang meninggal dunia tanpa berwasiat dan meninggalkan harta dalam bentuk 40 lot tanah di Muar, Johor. Rayuan-rayuan berbangkit dari satu keputusan yang arif hakim di bawah ('Perintah 16 Jun 1998') yang memerintahkan penjualan 13 dari 40 lot tanah tersebut kepada responden pada harga yang didakwa lebih rendah dari harga pasarannya. Perayu 1 hingga 3 dalam Rayuan 485, yang juga perayu dalam Rayuan 627, adalah pentadbir bagi pusaka, sementara perayu 4 hingga 6 dalam Rayuan 485 adalah pencelah dalam rayuan tersebut.

Tidak dinafikan bahawa: (i) Perintah 16 Jun 1998 dibuat ekoran permohonan saman-dalam-kamar oleh pentadbir untuk perintah jualan 40 lot tanah tersebut pada harga-harga rizab tertentu ('Permohonan 1995'); (ii) sebelum Permohonan 1995, responden memfail saman pemula pada tahun 1992 ('SP852') memohon perintah pembahagian bagi 40 tanah tersebut, tetapi tiada perintah dibuat oleh mahkamah mengenainya; (iii) dalam membuat Perintah 16 Jun 1998, yang arif hakim telah membenarkan responden menarik balik laporan penilaian tanah mereka tetapi pada masa yang sama enggan menerimapakai laporan-laporan penilaian pentadbir (kedua-duanya menyebut harga yang jauh lebih tinggi bagi lot-lot berkenaan); dan (iv) dalam membuat Perintah 16 Jun 1998, yang arif hakim kelihatannya tidak sedar bahawa responden dan pentadbir, dalam memfail SP852 dan Permohonan 1995 masing-masingnya, gagal menyampaikan sebarang notis mengenai permohonan-permohonan tersebut kepada perayu 4

hingga 6. Di samping fakta-fakta ini, ekoran Perintah 16 Jun 1998, pentadbir menyedari bahawa terdapat beberapa kesilapan taip pada harga-harga rizab yang tercatat pada laporan penilaian mereka, dan mereka dengan itu memohon secara lisan kepada yang arif hakim untuk meminda kesilapan-kesilapan tersebut. Permohonan bagaimanapun telah ditolak dan pentadbir merayu melalui Rayuan 627 di sini. Isu utama yang berbangkit adalah: (i) sama ada Perintah 16 Jun 1998 tidak boleh dipertahankan di sisi undang-undang dan harus diketepikan; dan (ii) sama ada yang arif hakim telah silap apabila menolak permohonan untuk meminda.

Diputuskan (membenarkan rayuan-rayuan)
Oleh Arifin Jaka HMR menyampaikan penghakiman mahkamah:

[1] Kegagalan responden membuat serahan SP852 bagi mendapatkan perintah pembahagian dan kegagalan pentadbir membuat penyampaian Permohonan 1995 untuk perintah jualan ke atas perayu 4 hingga 6 jelas telah melanggar prinsip-prinsip keadilan asasi. Atas alasan ini sahaja, perayu 4 hingga 6 berhak mengetepikan perintah 16 June 1998 *ex debito justitiae*.

[2] Aduan responden 4 hingga 6 adalah bahawa yang arif hakim tidak berpandukan kepada kaedah harga terbaik yang ada dan bahawa beliau telah menjual 13 lot-lot tanah terpilih kepada kelima-lima responden pada kadar harga yang keterlaluan rendahnya berbanding dengan harga penilaian tanah atau harga penilaian pentadbir. Dengan hormat, ketidakpuasan ini adalah berasas dan disokong oleh autoriti-autoriti yang banyak.

[2a] Yang arif hakim, diandaikan satu permohonan yang teratur untuk perintah jualan berada di hadapan beliau, seharusnya menggunapakai kaedah harga terbaik dan menjual 13 lot tanah tersebut pada harga terbaik yang boleh dicapai. Objek terpenting kaedah harga terbaik adalah untuk melindungi kepentingan kesemua waris yang berhak kepada pusaka dan bukan sekadar memenuhi kepentingan sebahagian daripada mereka sahaja.

[2b] Yang arif hakim telah membenarkan responden menarik balik laporan penilaian mereka dan telah membuangkannya dari rekod tanpa memberi sebarang sebab baginya. Responden, selepas menarik balik laporan mereka, bagaimanapun telah bersetuju dengan laporan penilaian responden. Dalam halkeadaan sedemikian, yang arif hakim sepatutnya berpandu kepada laporan penilaian responden, dan oleh itu, seharusnya

menjual Lot 2983 pada harga minima RM400,000, dan bukannya RM56,250. Yang arif hakim telah silap di sisi undang-undang apabila menjual lot tersebut pada harga yang sangat tidak munasabah yang jauh lebih rendah dari harga minima.

[3] Dalam Permohonan 1995, pentadbir memohon untuk perintah jualan 40 lot tanah pada harga rizab yang tertentu, tetapi tidak memohon supaya mana-mana lot dijual kepada kelima-lima responden atau kepada mana-mana orang lain. Yang arif hakim tidak mempunyai kebebasan untuk keluar dari skop permohonan pentadbir tersebut, dan telah silap dalam membuat Perintah 16 Jun 1998 di sini.

[5] Berkaitan rayuan 627, bantahan responden jelas tidak bermerit. Yang arif hakim seharusnya membenarkan pemindaan bagi mencerminkan harga-harga rizab yang betul berdasarkan keterangan laporan penilaian pentadbir yang ada di hadapannya.

Perintah 16 Jun 1998 diketepikan; kos perayu dibayar oleh pusaka, sementara responden menanggung kosnya sendiri; Permohonan 1995 dihidupkan semula]

Case(s) referred to:
Berthelsen v. Director General of Immigration Malaysia [1987] 1 MLJ 134 ***(refd)***
Buttle v. Sounders [1950] 2 All ER 193 ***(foll)***
Che Ah Che Yang Kalsom v. Che Ahmad [1941] 10 MLJ (FMSR) 126 ***(foll)***
In re Dawson (Deceased) [1959] NZLR 1360 ***(foll)***
In re Estate of Tunku Mohamed Jewa [1982] 2 MLJ 44 ***(foll)***
Muniandy v. D & C Bank [1996] 2 CLJ 586 FC ***(refd)***
Ng Lit Cheng v. Felixia Varnakulasinghe [1977] 2 MLM 249 ***(foll)***
R v. Appeal Committee of County of London Quarter Sessions [1956] 1 All ER 670 ***(foll)***
White v. Winston [1965] 2 QB 647 ***(refd)***

Legislation referred to:
Distribution Act 1958, s. 6(1)(e)
Probate and Administration Act 1959, s. 60(4)

(Civil Appeal Nos: J-02-485-1998 & J-02-627-1998)
For the 1st, 2nd & 3rd appellants - Dominic Puthucheary (Firoz Hussein Ahmad Jamaluddin with him); M/s Puthucheary Firoz Asmet & Mai

(Civil Appeal No: J-02-485-1998)
For the 4th & 5th appellants - Wong Kim Fatt (Wong Boon Lee & Suraya Hani Abdul Halim with him); M/s Gulam & Wong

(Civil Appeal No: J-02-485-1998)
For the 6th appellant - KS Dass; M/s K Sila Dass & Partners

(Civil Appeal Nos: J-02-485-1998 & J-02-627-1998)
For the 1st, 2nd, 3rd & 4th respondents - SC Yap; M/s Arthur Lee & Co

(Civil Appeal Nos: J-02-485-1998 & J-02-627-1998)
For the 5th respondent - Alvin John (KC Lu & Yvonne Teo with him); M/s Shahrizat, Rashid & Lee

Reported by WA Sharif

JUDGMENT

Arifin Jaka JCA:

There are two appeals in these proceedings, namely Rayuan Sivil No. J-02-485-1998 and Rayuan Sivil No. J-02-627-1998. The appeal of the six appellants in Civil Appeal No. J-02-485-1998 ("Appeal 485") was by the consent of all the parties heard together with the appeal of the three appellants in Civil Appeal No. J-02-627-1998 ("Appeal 627") as they related to the same immovable property of the estate of the late Mr. Gan Cheng Leong ("the deceased"). In Appeal 485, the first three appellants are the administrators as well as beneficiaries of the estate of the deceased, and the other three appellants are the interveners. The five respondents in Appeal 485 are also the five respondents in Appeal 627, and they are among the 16 beneficiaries (ie, the 15 children and their mother the 1st appellant) of the estate of the deceased. After hearing learned counsel for all the parties, the court unanimously allowed both the appeals with costs. We now give our reasons for doing so.

Background Facts

These appeals have a long and chequered history. In order to understand them properly, it is necessary to narrate their background facts briefly. The deceased died intestate over three decades ago on 26 November 1972. He married the 1st appellant Madam Khoo Cheng and they had 15 children. The deceased was survived by the 1st appellant and their 15 children. Two of their children had since died and are represented by their legal personal representatives. Letters of Administration of the estate of the deceased were granted to the 1st appellant and their sons Mr. Gan Hong Chuan (2nd appellant) and Mr. Gan Hong Chai (3rd appellant). We will refer to them jointly as the administrators. The deceased had left behind valuable immovable property, *viz.* the 40 lots of land forming the subject matter of the appeals. All these lots of land are situate in the District of Muar, State of Johor. They have remained unsold or undistributed until today Over the decades, their values have appreciated substantially.

On 1 December 1992, the five respondents in these two appeals made an application by Originating Summons No. 852 of 1992 ("O.S. 852") in the Johor Bahru High Court where they are the plaintiffs, seeking an order for the distribution of the property of the estate of the deceased. In this O.S. 852, the five respondents cited eleven defendants, ie, their mother (the 1st appellant) and the other siblings. No distribution order has been made by the court to date on O.S. 852.

In the meantime, the administrators through their previous solicitors made an application by summons-in-chambers dated 30 August 1995 (encl. 26) ("the administrators' application") in O.S. 852 for an order of sale of the 40 lots of land of the deceased's estate at the stated reserved prices based on the valuation reports of their valuers M/s Henry Butchers. The administrators' application for the permission of court to sell the immovable property of the estate was made under s. 60(4) of the Probate and Administration Act 1959 and it was adjourned many times over several years until it was finally heard by the learned judge on 16 June 1998 when he made his order ("the order of 16 June 1998") appealed against in Appeal 485.

The 4th, 5th and 6th appellants in Appeal 485 are three of the eleven defendants in O.S. 852 which, as stated earlier, was instituted by the five respondents herein for an order of distribution. As for service of the relevant applications, it is not in dispute that the 4th-6th appellants were not served with O.S. 852 as well as the administrators' application for an order of sale of the 40 lots of land belonging to the estate of the deceased. Being wholly dissatisfied with the order of 16 June 1998 of the learned judge, the 4th-6th appellants shortly thereafter made applications in High Court before the learned judge to set aside and to stay his said order until disposal of their applications. Unfortunately, these applications to set aside and for stay were not heard in good time by the learned judge by the time the administrators' appeals in Appeal 485 and Appeal 627 were fixed for hearing before the Court of Appeal on 31 July 2002. As the 4th-6th appellants were not parties in Appeal 485 in the Court of Appeal, they had applied promptly to that court for leave to intervene in this appeal. On that day, on the intervention applications of the 4th-6th appellants in Appeal 485, the Court of Appeal of a different panel consisting of our learned brothers Dato' Abdul Hamid, Datuk Wira Mohd. Noor and Dato' PS Gill, JJCA (as they then were) unanimously allowed the intervention applications and ordered the three interveners to be added as parties as the 4th-6th appellants in Appeal 485 and to file their Memorandum of Appeal, which they did.

The two appeals were then adjourned and subsequently fixed for hearing before this court on 24 February 2004. During the hearing of the appeals, a total of ten counsel appeared before the court representing the various interested parties. In Appeal 627, the learned judge in the High Court, after making his order of 16 June 1998 but before it was perfected, had refused on 18 August 1998 the oral application of former counsel for the administrators to amend some typing errors. Appeal 627 is therefore against the refusal of the learned judge to allow the amendment sought and we will deal with this matter later on in this judgment. We had the advantage of reading the written submissions and bundles of authorities of learned counsel for all the parties. The written submissions of Dr. Wong Kim Fatt on behalf of the 4th and 5th appellants had raised the several issues relevant to our consideration and determination of these appeals.

The Natural Justice Issue

As stated earlier, the respondents' O.S. 852 for distribution and the administrators' application for an order of sale had not been served on the 4th-6th appellants, and no notice was given to the latter regarding the hearing on 16 June 1998, when the learned judge made his order of 16 June 1998 complained of. The 4th-6th appellants had a direct interest in O.S. 852 and the administrators' application and were entitled to be heard. The learned judge had not properly directed himself on the non-service of the relevant documents on the 4th-6th appellants. He merely assumed that O.S. 852 for distribution had been served on all the defendants when it had not. He said in his judgement: "Before I made the aforesaid order of 16 June 1998, I have the occasion to seek the view of all the 5 said plaintiffs and also the 2nd-3rd defendants; the rest of the beneficiaries did not even file their respective appearances." How were the rest of the beneficiaries to enter their appearances when they were not served with O.S. 852? In our opinion, the respondents' failure to serve O.S. 852 for an order of distribution and the administrators' failure to serve their application for order of sale and notice of hearing fixed on 16 June 1998 on the 4th-6th appellants constituted a clear violation of the rules of natural justice. On this ground alone, the 4th-6th appellants are entitled to have the impunged order of 16 June 1998 set aside *ex debito justitiae*. On this natural justice issue, we need only refer to a few leading authorities without citing any passages: *Muniandy v. D & C Bank* [1996] 2 CLJ 586, *J.P. Berthelsen v. Director General of Immigration Malaysia* [1987] 1 MLJ 134, *White v. Winston* [1965] 2 QB 647 and *R v. Appeal Committee of County of London Quarter Sessions* [1956] 1 All ER 670 court order for sale.

Section 60(4) of the Probate and Administration Act 1959 expressly provides that an administrator may not without the previous permission of the High Court "(a) mortgage, charge or transfer by sale, gift, exchange or otherwise any immovable property situate in any State and for the time being vested in him." These provisions are intended to prevent any improper sale of or dealing in the immovable property of the estate of a deceased by an administrator, who is required by law to apply to the High Court for an order of sale, supported by affidavit exhibiting a reliable valuation report on the property concerned for the consideration of the judge.

The Best Price And Interest Of All Beneficiaries

In these appeals, the administrators had annexed their valuation reports of M/s Henry Butcher of 24 December 1994 on the then current market values to their affidavit on the 40 lots of land in questions. The five respondents had challenged the administrators' market values as being too low and, through the affidavit of Madam Gan Hong Yock (1st respondent), the respondents filed their own valuation reports of M/s JS Valuers of 3 January 1996 on the then current market values showing very much higher values over each property valued on behalf of the administrators, from item 1 to item 40.

We need only refer to two items to show the vast differences in value tabled in the affidavit of the 1st respondent dated 21 January 1996 at AR 203-AR 211 in Appeal 485 For example, (a) for item 36 on the 3-storey shophouse on Lot TLO 2083, Muar, the administrators' valuation at AR 488 is RM400,000, while the respondents' valuation at AR 673 is twice that value at RM850,000 when the judge sold it to the 1st respondent at an incredibly low price of RM52,560; and (b) for item 26 on Lot 2697, the administrators' valuation is RM77,440 at AR 490, while the respondents' valuation is nearly ten times higher at RM765,000 at AR 591, when the judge sold it to the 2nd respondent for a mere RM70,000!

With respect, the learned judge, assuming he had a proper application for sale before him, should have applied the best price rule and sold the 13 lots of land at the best prices available. We are of the opinion that the ultimate object of the best price rule in the circumstances of the case is the protection of the interest of all the beneficiaries of the estate as a whole, not merely the interests of some of the beneficiaries. The learned judge had allowed the respondents to withdraw their valuation reports and expunged them from the record, without giving any valid reason. The respondents, after withdrawing their valuation reports, then accepted the administrators' valuation reports. In the circumstances, the learned judge should have acted on the valuation reports

of the administrators, and the Lot 2083 should therefore be sold at the minimum price of RM400,000, instead of RM52,560. He had erred in law by selling it at a wholly unjustifiable price many times lower than that minimum price.

The complaint of the 4th-6th appellants is that the learned judge did not observe the best price available and that he had favoured the five respondents and sold the 13 selected lots of land to them at prices incredibly lower than their own valuations or those of the administrators. With respect, this complaint is well founded and supported by a long line of authorities. In *Che Ah Che Yang Kalsom v. Che Ahmad* [1941] 10 MLJ (FMSR) 126 Terrell JA said at p. 128 in the former Court of Appeal in 1941 that the first duty of the court is "to protect the interests of the estate." That court did not approve the lower price and ordered the sale at the higher reserved price. In *Buttle v. Sounders* [1950] 2 All ER 193, Wynn-Parry J, in holding at p. 195 that the trustees "have an overriding duty to obtain the best price which they can for their beneficiaries," gave them liberty to sell to a serious purchaser at the highest price. In the case of *In re Estate of Tunku Mohamed Jewa* [1982] 2 MLJ 44, Syed Agil Barakbah J (as he then was), said at p. 46: "I feel it is my duty to protect the rights of all the beneficiaries in the land to be sold." And in the New Zealand case cited on behalf of the respondents, *In re Dawson (Deceased)* [1959] NZLR 1360, Adams J, in dealing with s. 64 of the New Zealand Trustee Act 1956, which has resemblance to s. 59 of the Malaysian Trustee Act 1949, said "... the court must take into consideration the interests of all the beneficiaries." We agree with the principles stated in the cases above. It may be noted that in *Ng Lit Cheng v. Felixia Varnakulasinghe* [1977] 2 MLM 249, our former Federal Court restored the order of sale of the property which was sold at a price higher than it was valued by a first class appraiser five days earlier.

Judge Made Order Not Applied For

Learned counsel for the 4th-6th appellants complained that in the administrators' application by summons-in-chambers, the administrators had applied to court for only an order of sale of the 40 lots of land at the stated reserved prices. The administrators had not applied for any lot of land to be sold to the five respondents or anyone. We are of the view that the learned judge was not at liberty to go beyond the scope of the administrators' application before him for his decision. Learned counsel for all the appellants further complained that what the learned judge did was in effect to sell the 13 selected lots of land to the five respondents with preferential treatment. With respect, the learned judge erred in law in making the order of sale of

16 June 1998, which must be set aside. He should have given due regard to the interests of all the beneficiaries, not just a faction of them. If a property is sold below the reserved price based on a proper valuation report, each beneficiary will receive less money on distribution by the administrators, especially the mother whose share is one-third under s. 6(1)(e) of the Distribution Act 1958. Once the order of sale is made under s. 60(4) of the Probate and Administration Act, it is the duty of the administrators to sell the estate property at a price not lower than the reserved price. The administrators should act in the best interest of the estate and sell it at the highest price that is available.

Appeal 627 – Refusal On Amendment

We now address Appeal 627. This is an appeal by the administrators against the refusal on 18 August 1998 of the learned judge to amend certain items in the administrators' application. The former counsel for the administrators had urged the learned judge for the relevant reserved prices to be amended in the summons-in-chambers as there were some 8 obvious typing errors for the reserved prices which were based on the valuation reports of the administrators. We need to illustrate only two instances of error: (1) for lot 1786 (item 33 of the summons-in-chambers) the reserved price of RM400,000 should read RM300,000 (AR 123), and (2) for Lot 2083 the reserved price of RM52,560 should read RM400,000. Learned counsel for the respondents objected to the amendment and the learned judge had refused it.

The court's duty is to ensure fairness of dealings among the administrators and all the beneficiaries of the estate. During the hearing of the appeal, we asked counsel for the respondents if they were seriously opposing the appeal. However, they answered in the positive. We then asked them for the real reason why they opposed the amendment which would reflect the proper prices in the administrators' valuation reports which they had accepted. Mr. S.C. Yap was frank enough with the court, and rightly so, in stating that he objected to the amendment solely because it was made orally and not in writing, although earlier he had been notified in a letter to him on the proposed amendment. We are of the view that the objection of the respondents is without any merit and that the learned judge should have allowed the amendment to reflect the proper reserved prices based on the evidence of the administrators' valuation reports which were before him.

Appeals Allowed

At the end of the hearing, the court made the following orders. The court allowed both the appeals and set aside the order of 16 June 1998 of the learned judge, with costs. Normally, costs will follow the event and the unsuccessful party must pay the taxed costs of the successful party. In these appeals, counsel for the respondents requested us that the costs be paid by the estate of the deceased, and counsel for the administrators not objecting, in the exercise of our discretion, we ordered that the costs of the appellants be paid by the estate. The respondents, being unsuccessful, must bear their own costs. The court farther ordered that in Appeal 485 the administrators' application by summons-in-chambers dated 30 August 1995 (encl. 26) for an order of sale be reinstated and be fixed for mention before the High Court (1) in Johor Bahru on 9 March 2004 at 9am. The administrators are at liberty to apply to amend their said summons-in-chambers.